



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

GARY A. CREAMER,  
Plaintiff,

vs.

MAJOR C. WEST, SGT. RIVERS,  
SGT. D. BROWN, SGT. SIMS,  
SGT. HAYWARD, and LT. BRAYBOY,  
Defendants.

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§ CIVIL ACTION NO. 6:13-2388-MGL-KFM

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ORDER ADOPTING THE REPORT AND RECOMMENDATION  
AND DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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This case was filed as a 42 U.S.C. § 1983 action. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that Defendants' motion for summary judgment be denied. The Magistrate Judge also recommends that the parties be given forty-five days to complete discovery and that Defendants be given two weeks following the close of discovery to file another motion for summary judgment. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may

accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on August 18, 2014, but neither party filed any objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that Defendants’ motion for summary judgment is **DENIED**. The Court will leave the scheduling of the completion of discovery and the filing of motions to the discretion of the Magistrate Judge.

**IT IS SO ORDERED.**

Signed this 9th day of September, 2014, in Spartanburg, South Carolina.

s/ Mary G. Lewis  
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MARY G. LEWIS  
UNITED STATES DISTRICT JUDGE